IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Crl.MC.No. 1540 of 2007(B)

ST.54/1995 of JUDL.MAGISTRATE OF FIRST CLASS, NADAPURAM
CRL.A.202/1996 OF SESSIONS COURT, KOZHIKODE
CRL.R..667/2000 OF THE HON'BLE HIGH COURT OF KERALA
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PETITIONER:

SUDHEER KUMAR @ SUDHEER, S/O.KUMARAN,
PATTARKANDIYIL HOUSE, VILATHAPURAM AMSOM,
MUTHUVADATHUR DESOM, VADAKLARA.

BY ADV. SRI.R.PARTHASARATHY

RESPONDENTS:
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1. MANAKKANDI M.K.KUNHIRAMAN, S/O.KELAPPAN,
KETHARA,PURAMERI AMSOM, DESOM, VADAKARA.

2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR
SRI.BIJI MATHEW

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.M.C. No. 1540 of 2007

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DATED: 15-05-2007

REFERENCE O R D E R

This is a case in which prosecution under Section 138 of the Negotiable Instruments Act, 1881 in respect of a dishonoured cheque presumably for a sum of Rs.25,000/- was launched way back in the year 1995. The accused was convicted after trial by the Magistrate and his conviction was confirmed by the Sessions Judge, Kozhikode in appeal and by this Court in revision. It is thereafter that this petition under Section 482 Cr.P.C has been filed for accepting a composition alleged to have been arrived at between the parties subsequent to the order of this Court. The decision of a learned Judge of this Court in **Sabu George v. Home Secretary** - **2007(1) KLT 982** is relied on in support of the present request. The legal effect of allowing this petition by invoking the inherent power of this Court would be to efface the conviction entered and sentence passed by this Court in Crl.R.P.667/2000 which in the normal course could have been interfered with only by the Supreme Court in appropriate proceedings. Apart from the fact that the consequence which is sought to be avoided by the accused is not one flowing from the proceedings of an inferior court, the course now sought to be

resorted to appears to be impermissible in the light of the decision of the Apex Court reported in **Sankar Ramchandra Abhyankar v. Krishnaji Dattatraya Bapat** - **AIR 1970 S.C. 1.** More over, a reading of sub sections 4 (a), 4 (b), 5 and 6 of Section 320 Cr.P.C. would indicate that compounding can be had only in a pending proceedings and with the permission or consent, as the case may be, of the court even if the offence is one compoundable without the permission of the Court. In the case of offences falling under sub-section (2) of Section 320 Cr.P.C. the very fact that those offences can be compounded only with the permission of the Court would suggest that some proceedings should be pending before the Court when the request to compound the offences is made and entertained. A proceeding which has culminated in a final order cannot, in any view, be revived by filing a compounding petition. I am, therefore, of the view that the decision in **2007 (1) KLT 982** (supra) requires reconsideration by a Division Bench. This Crl. M.C. may accordingly be placed before the Hon'ble the Chief Justice for appropriate orders.

V. RAMKUMAR, JUDGE.

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